Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 31 of 2001 (S/S)

Khairati Ram …….. Petitioner

Versus

State and others …….. Respondents

Mr. B.P.S. Mer, learned counsel for the petitioner.
Mr. Subhash Upadhyaya, learned Brief Holder for the State.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought a writ of mandamus directing the respondents to restrain from interfering in the functioning of the petitioner as Chowkidar and also for quashing of the order/ notice dated 14.08.2000(Annexure- 3 to the writ petition), retiring the petitioner at the age of 58 years.

2. Brief facts giving rise to the above writ petition are that petitioner, namely Khairati Ram was initially inducted in service as Chowkidar / Beldar (Class IV Category) in the pay scale of 257/- w.e.f. 10.06.1978 in the work charge in the establishment of Irrigation Department. The date of birth of the petitioner, as per the service record, is 06.01.1943, as such, he would have retired at the age of 60 years on 31.01.2003. The petitioner is working continuously from the date of his initial induction. Though the nature of his job was temporary, but he continuously worked to the satisfaction of the officers of the Department. The petitioner was appointed against a substantive post of Chowkidar / Beldar (Class IV employee) in the pay scale of 305-360-390

and after the revision of the pay scale, the revised pay scale of the said post w.e.f. 01.01.1986 is Rs. 750-940. The services of the petitioner were regularised as Class IV employee w.e.f. 01.09.1993. The petitioner was subsequently confirmed in the Irrigation Department. According, to the petitioner, the retirement age of the work charge employees was 60 years. The petitioner has been served with the notice from the respondents for retiring him at the age of 58 years as has been regularised after 05.11.1985. In the writ petition, it has been challenged that the petitioner cannot be treated to be appointee after the cut-off date of 05.11.1985 merely for the reason that he has been regularised thereafter.

3. Respondents No. 1 to 4 have contested the writ petition and filed their counter affidavit in the writ petition. it is admitted that the petitioner was work charge employee from the dates shown in the writ petition. There is no dispute as to the date of birth of the petitioner. As per the Government Order dated 05.11.1987, only those Class IV employees who were appointed prior to 05.11.1985 are entitled to retire at the age of 60 years, as such, those appointed thereafter, had to reitre at the age of 58 years. It is further stated in the counter affidavit that prior to his regularization, the petitioner was not Chowkidar on the substantive post. As such, the notice issued to the petitioner is contended to be valid and according to the law.

4. I have heard learned counsel for the parties at length and perused the relevant papers on recored.

5. U.P. Fundamental (First Amendment) Rules, 1987 (applicable in Uttaranchal) have been notified on 20.7.1987,

whereby the Rule 56 of the Financial Hand Book, Para 2 Volume II has been amended w.e.f. 05.11.1985. According to the said amendment, the employees of Class IV Category will retire at the age of 58 years except those who have been appointed prior to 05.11.1985, for whom, the retirement age has been fixed to be 60 years. A copy of the said Notification is annexed as Annexure CA 1 to the counter affidavit to the writ petition.

6. As per the Office Memorandum dated 14th November, 1996 issued by the Irrigation Department, Government of U.P. (applicable in Uttaranchal) the work charge employees having pay scale of Rs. 750-940 will retire at the age of 60 years, if they have been appointed prior to 05.11.1985 and others at the age of 58 years. A copy of the said Office Memorandum issued by the Chief Engineer is annexed as Annexure- 2 to the writ petition.

7. The sole question arises for consideration before this Court is that whether the word “recruitment” mentioned in the aforesaid Notification, whereby Fundamental Rule 56 was amended. Refers only to the regularization of the petitioner or it includes appointment as work charge also. Learned counsel for the petitioner submitted that the word “recruitment” does not refer to the regularization while the learned counsel for the respondents argued that since before regularization, the petitioner was holding the post of work charge, as such, he cannot be said to have been recruited as Government Servant prior to his regularization.

8. Looking into the Annexure 1 to the writ petition, which is Office Memorandum dated 23.01.1979, it is very clear that the petitioner was appointed as Chowkidar w.e.f. 10.06.1978 on

work charge basis. Also, Annexure 2 to the writ petition, which contains the copy of the Office Memorandum dated 14.11.1996 issued by the office of the Chief Engineer, Irrigation Department, clearly shows that the work charge employees were on the pay scale of Rs. 750-940 and were to retire at the age of 60 years. These documents suggest that the petitioner was not like casual labourer having any fixed wage for a day. Rather, he was on a particular scale of pay though known to be work charge employees as his service was liable to be terminated if the work or the project comes to an end. Unlike casual labourers, as per the documents as mentioned above, retirement age of the work charge employees has been fixed even for those who have not been regularised. As such, in my considered view, the petitioner cannot be treated to have been recruited from the date of regularization for the purpose of Fundamental Rule 56 of the Financial Hand Book, Part 2 Volume II.

9. Learned counsel for the respondents further argued that the petitioner ahs failed to challenge the virus of the amended Rules of 1987 and, as such, the same, whether right or wrong, applies with full force against the petitioner. In reply to this argument, learned counsel for the petitioner contended that there was no need to get the Rule quashed as the word “recruitment” is being wrongly interpreted by the respondents.

10. I am in full agreement with the contention of the learned counsel for the petitioner as the word “recruitment” does not mean “regularisation” particularly for the purpose of workmen, who had their own pay scale and the retirement age. They shall be treated to be appointed prior to 5.11.1985 for the purpose of

Fundamental Rule 56 as amended vide U.P. Fundamental (First Amendment) Rules, 1987.

11. Therefore, for the reasons as discussed above, the notice of retirement issued against the petitioner for retiring him at eh age of 58 years is liable to be quashed.

12. Accordingly, the writ petition is allowed. The notice dated 14.08.2000 issued to the petitioner, for retiring him at the age of 58 years is, hereby, quashed. The petitioner shall be treated to have retired at the age of 60 years. Respondents shall pay the entire arrears of salary and post-retiral benefits treating him to be in service between the age of 58 years to 60 years.

(P.C. Pant, J.)

Dt.: 24th September. 2004
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